

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5618 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL JIBHAI DWARKADAS

Versus

MEHSANA DISTRICT PANCHAYAT

Appearance:

MR MC BAROT for Petitioners
MR PK JANI for Respondent No. 1
Mr. Premal Joshi AGPfor Respondent No. 2, 3

CORAM : MR.JUSTICE R.BALIA. and
MISS JUSTICE R.M.DOSHIT
Date of decision: 26/11/1999

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. This
petition has been filed on 13-7-1999 for challenging the
land acquisition proceedings in which notice in respect

of the land in question along with the other lands for the purpose of constructing a road or published in Official Gazette on 28-2-1991 and declaration under Section 6 was made on 12-3-1992. Thereafter award in respect of all the lands covered under the notification was also made on 20-8-1992. Thus acquisition proceedings are challenged now inter alia on the ground that no notice under section 9(2) have been served on the present petitioners personally notwithstanding that the Land Acquisition Officer had knowledge that the petitioners are persons interested in land inasmuch as the names of the petitioners appear in the land records as holders of Survey No. 225, the land under acquisition. The award made on 20-8-1992, so far as present petitioners are concerned is non est and not binding on them. No award having come into existence in the eye of law qua the petitioners' land, land acquisition proceedings must be held to have lapsed in view of the provisions of Section 11-A of Land Acquisition Act, if not in its entirety atleast to the extent the interest of petitioners in the land.

2. Prima facie the question appears to be tempting to be considered but in the facts and circumstances of the case we are of the opinion that this is not a case in which this court could exercise its extraordinary jurisdiction in favour of the petitioners. The petitioners claim to have acquired interest in land as heirs to one Dwarkadas the original holder of the land shown as per the entry no. 60 dated 15-5-1965. On his death on 13-1-1975 names of the five sons Keshavlal, Maganlal, Jeebhai Kantibhai and Ramanbhai of Dwarkadas were entered as joint khatedar holders vide entry no. 296 on 29-6-75 as per the averments made by the petitioners in the petition. The fact that the petitioners were aware about land acquisition proceedings since beginning and also about the award is not disputed by learned counsel for the petitioner, and perhaps the same cannot be disputed in the facts and circumstances which we shall presently notice.

3. In the first instance only Keshavlal out of the five persons entered as heirs of Dwarkadas had approached this court by way of Special Civil Application No. 5264 of 1982 against the threatened disposition of the land by the State for the purpose of making road in which case statement was made by learned counsel for the State that the possession of the land in dispute shall not be disturbed except with the consent of the owner or occupant or by regular acquisition proceedings on which statement the said petition was dismissed as withdrawn on

December 29, 1982, by this Court. Thereafter when acquisition proceedings were commenced by the notification under Section 4 - present petitioner No.3 filed objection to the declaration proceedings after consideration of which declaration under Section 6 was made way back on 12-3-1992. The fact that he has filed objections to notification under Section 4 is not disclosed in the petition. Thereafter after the completion of acquisition proceedings, in the aforesaid manner, another brother Mangaldas along with some other transferees of the land without joining the present petitioners, the co-owners of the land as party to the suit, filed a Regular Civil Suit in the court of Civil Judge (S.D.) Mehsana. In the said suit also, the acquisition proceedings were challenged on the very same ground on which the present petitioner wants to challenge his said acquisition proceedings. That suit was filed in 1994 itself. In that suit notifications under Section 4 and 6 were held to be valid and it was found that notices under section 9(2) had not been served. In the said suit the finding was recorded that notice under Section 4 and 6 of the Land Acquisition Act were published and verification were made in the award notification under Section 12(2) of the Land Acquisition Act were issued to the original owners but the original owners have refused to accept the notices. That was to resist the claim of the transferees from the original owners in challenging the land acquisition proceedings for want of notice. However, it was found that Land Acquisition Officer has not done proper proceeding under Section 9 of the Act in issuing notices to interested persons. In the context of judgment of civil court such other interested person referred to were the transferees of land from original owners, but not the original owners themselves. On this finding it was further found that the transferees of the lands in question have become owners of the plots, and in respect of them it was directed that the Land Acquisition Officer to issue notices to relevant purchaser of sub plots under Section 9 of the Act and thereafter decide the amount of compensation for each such interested person and may carry on land acquisition proceedings as provided under sections 9, 10 etc. for further proceedings. Mangaldas and aid purchasers filed appeal against that order before the district Court Mehsana as well as a Special Civil Application No. 3887 of 1999 raising the very same issues as has been raised in this petition. In reply affidavit to the said petition copy of which was delivered to learned counsel for the petitioners on 13-7-1999 it was specifically averred that Mangaldas has been given notice under Section 9 whose name only appeared in the land records. Faced with this

situation the said petition has been withdrawn today. However, prior to that present Special Civil Application has been filed on 30-7-1999 on behalf of the remaining brothers who had earlier not chosen to challenge the award dated 20-8-1992, notwithstanding there being no plea of want of knowledge about such award at any time. They chose not to become parties to any litigation. Neither they joined Keshavlal in the Special Civil Application that was filed in 1982 nor in the suit filed by Mangaldas. It may further be noticed that notwithstanding Keshavlal objected to the apprehended acquisition of land for the purpose of road in 1982, has not chosen to challenge this proceeding in his own name until now. The chronology of events goes to show that in respect of this property the objection is raised at various stages by one of the brother-coowners only, firstly by Keshavlal then by petitioner No. 3 by raising objection before Land Acquisition Officer under Section 5A of the Land Acquisition Act, and thereafter by Mangaldas along with transferees of some sub plots. This goes to show that this land which jointly devolved on the five brothers on the death of Dwarkadas, the joint interest is being litigated by one or the other brother at one point of time and is primarily to safeguard the interests of all. In these circumstances, it cannot but be said that so far as viewed from that point of view notice the same was served at least on one of the joint owners of the property namely Maganlal and the present petitioners were also aware of the entire proceedings including making of the award. That fact has also not been disputed. If that is so the present petition patently suffers from laches which has been preferred in July 1999 only after it was brought to the notice of the court by affidavit of the respondents that Maganlal was in fact served with a notice under Section 9(2) and his claim to the contrary is erroneous and the said contention raised in petition filed by Maganlal and transferees of the sub plots of survey number 225 cannot be sustained. That the present petition has been filed by the remaining three brothers one of whom had chosen to file objections after notification under Section 4 was published.

4. In these circumstances, in our opinion it is not a case in which extraordinary jurisdiction should be exercised by this court to up-set the acquisition proceedings. It may further be noticed that in spite of being aware of the proceedings no attempt has been made to challenge the acquisition proceedings by way of approaching this court under Article 226 or to challenge the determination of compensation by the Land Acquisition

Officer by having recourse to Section 18 of the Land Acquisition Act for the purpose of making reference. Law is well settled that even if a person interested has not filed objection before Land Acquisition Officer but if he is aggrieved with the determination of compensation made by the Land Acquisition Officer or about the person to whom compensation to be payable under the award he is entitled to claim for a reference and get the compensation determined by a civil court.

Accordingly we decline to entertain this petition and discharge the notices.

There shall be no order as to costs.

(Rajesh Balia, J) (R.M. Doshit, J)